

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KEVIN SMITH,

Plaintiff,

-v-

9:00-CV-1672  
(WWE/DEP)

DONALD SELSKY; et al.

Defendants.

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APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

KEVIN SMITH  
#87-A-9373  
Plaintiff, *pro se*  
Shawangunk Correctional Facility  
Box 700  
Wallkill, NY 12589

ENGLERT, COFFEY LAW FIRM  
***Pro Bono Trial Counsel***  
po Box 1092  
224 State Street  
Schenectady, NY 12301-1092

GREGORY E. SCHAAF, ESQ.

FOR THE DEFENDANTS:

HON. ELIOT SPITZER  
Office of the Attorney General  
State of New York  
The Capitol  
Albany, NY 12224

DEBORAH A. FERRO, ESQ.  
Assistant Attorney General

WARREN W. EGINTON, SENIOR U.S. DISTRICT JUDGE

**ORDER APPOINTING COUNSEL**

The Court has reviewed the entire file in this matter in conjunction with the

elements discussed in Local Rule of Practice 83.3(c) as to the factors a court should consider in determining whether to appoint counsel for a *pro se* litigant.

Based upon such review, this Court finds that the services **Gregory E. Schaaf, Esq.** could provide as “trial counsel” to the plaintiff herein would more likely lead to a just determination of this action. As “trial counsel” for the plaintiff, **Gregory E. Schaaf, Esq.** shall be responsible for the preparation of pretrial submissions. Counsel for the parties shall serve upon each other and the plaintiff *pro se*, and file with the Court the following papers:

- A. Completed Court Ordered Voir Dire Questionnaire. (Form enclosed).
- B. Proposed witness list with a brief description of the testimony expected to be elicited from each witness.
- C. Proposed exhibit list (Form enclosed). **NOTE:** Exhibits are not to be filed with the Court at this time. The parties are to bring the original exhibits to court at the time of trial.
- D. A trial brief of legal issues which may arise during the trial.
- E. Proposed jury charges.

These papers shall be served and filed with the Court by **July 11, 2005**. A date certain for trial will be set after the Court has reviewed all the pretrial papers.

Because it was the plaintiff’s responsibility to conduct discovery and because the discovery deadline in this matter has passed, absent exigent circumstances “trial counsel” shall not conduct any further discovery in this action. Rather, “trial counsel”

shall prosecute this action based upon the discovery produced to date.

If the parties choose to have the trial in this matter conducted by a U.S. Magistrate Judge, the party or the party's attorney should sign the attached consent form and mail it to the Clerk. If all parties consent, all further proceedings including the trial will be conducted by a Magistrate Judge. 28 U.S.C. § 636(c). If all parties do not consent, the trial will be conducted by the undersigned.

In light of the above, it is hereby

**ORDERED**, that **Gregory E. Schaaf, Esq.**, is appointed as “trial counsel” pro bono for the plaintiff in this action,<sup>1</sup> and it is further

**ORDERED**, that this appointment is for trial purposes only. Any appeals of this matter shall remain the responsibility of the plaintiff, and, therefore, counsel shall serve copies of all submissions upon the plaintiff *pro se* and it is further

**ORDERED**, that the Clerk serve a copy of this Order on the parties hereto, and **Gregory E. Schaaf, Esq.**, at Englert, Coffey Law Firm, PO Box 1092, 224 State Street, Schenectady, NY 12301-1092, and it is further

**ORDERED**, that the Court's file in this matter is available electronically for review by **Gregory E. Schaaf, Esq.**, and that **Gregory E. Schaaf, Esq.**, will be reimbursed for any charges incurred from PACER for copies of filed documents, and it is further

**ORDERED**, that Counsel, pursuant to Local Rule 83.3(g). may seek up to One

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Please note that pursuant to subdivision (i) of section 1500.22 of Title 22 of the Official Compilation of Codes, Rule and Regulations of the State of New York, CLE credit may be earned for performing uncompensated legal services for clients unable to afford counsel pursuant to an assignment by a court.

Thousand Two Hundred (\$1,200.00) dollars as reimbursement for expenses and/or disbursements necessarily incurred in this regard, and it is further

**ORDERED**, that the parties exchange, serve copies upon plaintiff *pro se*, and file with the Court on or before July 11, 2005, all pretrial papers as described herein.

**IT IS SO ORDERED.**

Dated: May 19, 2005

/s/ Warren W. Eginton  
Warren W. Eginton  
Senior U.S. District Judge  
Sitting by Designation

COURT ORDERED VOIR DIRE  
TO BE USED BY THE JUDGE AT TRIAL

CASE TITLE:  
CIVIL ACTION NO.:  
ASSIGNED JUDGE OR MAGISTRATE JUDGE:

ATTACHMENT #(1)

Each attorney is required to submit the following information on behalf of his/her client for use by the Court during Voir Dire and must be filed with the Court one week in advance of the trial ready date.

NAMES AND ADDRESSES OF ALL PARTIES TO THE LAWSUIT:

(use additional page if necessary)

YOUR NAME, FIRM NAME, ADDRESS AND THE NAME OF ANY PARTNER OR ASSOCIATE WHO MAY BE AT COUNSEL TABLE DURING THE COURSE OF THE TRIAL.

(use additional page if necessary)

SET FORTH THE DATE OF THE OCCURRENCE, THE PLACE OF THE OCCURRENCE AND A BRIEF STATEMENT OF THE EVENTS CENTRAL TO THE LITIGATION.

(use additional page if necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL LAY WITNESSES  
TO BE CALLED.

(use additional page if necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL EXPERT  
WITNESSES TO BE CALLED GIVING A BRIEF DESCRIPTION OF  
THEIR AREAS OF EXPERTISE.

(use additional page if necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY CAUSE OF ACTION IN THE COMPLAINT.

(use additional page if necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY AFFIRMATIVE DEFENSE ASSERTED AS WELL AS A STATEMENT ADDRESSING ANY COUNTERCLAIMS RAISED IN THE ANSWER.

(use additional page if necessary)

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PLEASE TAKE NOTICE that any delay in jury selection occasioned by the failure to provide this information will be explained to the jury as to the extent of the delay and the attorney causing same and if the delay causes a one (1) day or more postponement of this trial, appropriate monetary sanctions will be imposed by the Court.

Submitted by:  
Date:

<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>



United States District Court  
For The Northern District Of New York

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

Presiding Judge: \_\_\_\_\_

( ) Plaintiff      ( ) Defendant      ( ) Court

Exhibit No.	Marked for Identification	Admitted Into Evidence	Remarks	Witness	Exhibit Description

Page \_\_ of \_\_

Exhibit No.	Marked for Identification	Admitted Into Evidence	Remarks	Witness	Exhibit Description

Exhibits Returned To Counsel (Date):\_\_\_\_\_ Signature:\_\_\_\_\_

## **NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE TO EXERCISE OF JURISDICTION**

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that a United States Magistrate Judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or non-jury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. § 636(c), an appeal from a judgment entered by a magistrate judge will be taken to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a District Court.

Copies of the consent form are available from the Clerk of the Court.

**\*\*ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM\*\***

KEVIN SMITH,	:	
	:	
Plaintiff,	:	<b>CONSENT TO JURISDICTION BY</b>
	:	<b>A UNITED STATES MAGISTRATE</b>
v.	:	<b>JUDGE AND ORDER OF REFERENCE</b>
	:	
DONALD SELSKY; et al.,	:	9:00-CV-1672(WWE/DEP)
	:	
Defendants.	:	

CONSENT TO EXERCISE OF JURISDICTION  
BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. Section 636(c), and Fed.R.Civ.P. 73, the undersigned party or parties to the above captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment. Any appeal to the final judgment will be taken directly to the Court of Appeals for the Second Circuit.

<u>Signatures</u>	<u>Party(ies) Represented</u>	<u>Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(ATTACH ADDITIONAL SIGNATURE PAGE IF NECESSARY)

ORDER OF REFERENCE

**IT IS HEREBY ORDERED** that the above captioned matter be referred to the Honorable **DAVID E. PEEBLES**, United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. Section 636(c), and the consent of the parties.

_____	_____
Date	United States District Judge

**Note - RETURN THIS FORM TO THE CLERK**